

**REVIEW OF NAVIGABILITY AND LEGAL ROLLER COASTER RIDE
FOR UTAH'S PRIVATE STREAMBED OWNERS**

Randy Parker
Tel: 801.597.2968

UTAH CONSTITUTION: Article 1, Section 22: "Private Property Shall Not be Taken or Damaged for Public Use Without Just Compensation."

CERTAINTY OF TITLE: American Land Co. vs Zeiss (Supreme Court of the United States 1911): "It is the responsibility of governments, and the judiciary, to ensure certainty of title because the general welfare of society is at stake."

2000: Morgan County Justice Court finds Kevin & Jodi Conatser guilty of criminal trespass on the Weber River. Utah Supreme Court hears the case on appeal.

2008: Utah Supreme Court overrules lower courts concluding "Because the Legislature has not acted, we make our own rule. There is a public easement on Utah streams since the water belongs to the public." Including the right to walk on private streambeds.

2010: Utah Legislature passes HB 141 Recreational Use of Public Water on Private Land. (Rep. Kay McIlff)
Utah Code 73-29-201 Public Waters Access Act recognizes the public's right as defined in J.J.N.P (Utah Supreme Court – 1982): "A right to float on the state's water regardless of who owns the land." While privately owned stream beds and banks are protected from public access and trespass.

2012: United States Supreme Court (PPL Montana vs Montana) Unanimously rules against the state's claim to all the streambeds based on the Equal Footing Doctrine. SCOTUS states "this is well settled law and is based on a segment-by-segment determination to establish navigability for title."

2015: Fourth District Judge Derek Pullan (USAC vs Victory Ranch) invoked the Public Trust Doctrine on the upper Provo River striking down the Public Waters Access Act, providing recreational access to private streambeds.

2017: Utah Supreme Court (USAC vs Orange Street Development) finds on the upper Weber River, a one-mile stretch was used for floating railroad ties (commerce) before statehood meeting the standard established in PPL Montana vs Montana. However, did it meet the ordinary and natural condition prevailing in the greater part of the year?

2021: On remand the Utah Supreme Court asks Judge Pullan: "were there actual easements at statehood?" In his reversal, Pullan declares: "The public has no right to walk on or touch the bottoms of streams crossing private property. Therefore, the Provo River is not navigable for title."

2023: Utah Supreme Court (USAC vs Victory Ranch): The State High Court weighed the question of whether 19th century pioneer settlers' protection and a present-day easement, saying there is "no Constitutional protection for the public's right to touch privately owned streambeds underlying state waters." In conclusion the Court said any further policy considerations by USAC "are better directed to the legislature."

SUPREME COURT OF THE UNITED STATES

NAVIGABLE FOR TITLE:

OKLAHOMA vs TEXAS (1922): To establish a public easement for recreation, "disregard temporary high water and consider conditions prevailing in the greater part of the year."

UNITED STATES vs UTAH (1931): At statehood, to claim ownership, "the stream must have been used or susceptible of use for trade and travel in its ordinary and natural condition."

PPL MONTANA vs MONTANA (2012): "It is well settled law and is based on a segment-by-segment determination to establish navigability for title."

DEFINITIONS

PUBLIC TRUST DOCTRINE: Ancient origin and Old English Law. The public is the beneficiary of certain resources, and the government has the responsibility to assure they are used for public use, not personal use.

EQUAL FOOTING DOCTRINE: US Constitution (Article IV, Section 3, Clause 1) New states may be admitted to the Union and shall enter on an equal footing with the original 13 states.